

November 19, 2017

VIA ECF AND EMAIL

The Honorable Shelley C. Chapman
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004

Re: In re Lehman Brothers Holdings Inc., et al., Ch. 11 Case No. 08-13555 (SCC)

Dear Judge Chapman:

We apologize in advance for inconveniencing Your Honor on a Sunday. However, we unfortunately are compelled to write to the Court on the eve of trial concerning another recent abuse by the Trustees of the disclosure process contemplated by Exhibit G, which is likely to impact the proceedings commencing before Your Honor tomorrow morning. On Friday afternoon, after the conclusion of the Plan Administrator's deposition examination of Mr. James Aronoff, the Trustees elicited scripted "re-direct" testimony from Mr. Aronoff concerning the approximately 15,000 loans and 77,000 claims that had been submitted to the Protocol, but which the Trustees withdrew during the course of this estimation proceeding. As with the belated "reply" expert report of Mr. Finkel served by the Trustees last week, the testimony elicited from Mr. Aronoff constitutes a last-minute expansion of the subject matter of his expert testimony, this time into areas that (i) Mr. Aronoff explicitly disclaimed knowledge of at his prior deposition (and was never discussed in his expert reports), and (ii) which the Trustees previously shielded from discovery by the Plan Administrator on the basis of attorney-client privilege and attorney work product.¹ Because we anticipate that the Trustees will seek to rely on this improperly obtained purported evidence in their opening statement tomorrow, we write to seek relief from the Court, and to prevent the Trustees from making this last-minute amendment to Mr. Aronoff's opinion, which would be highly prejudicial to the Plan Administrator.

Although we understand the Court is aware of the background on this issue, we briefly set forth here the relevant facts for the Court's convenience. On June 1, 2017, the Trustees submitted Mr. Aronoff's opening report in this matter, which offered opinions on only 76,000 loans, even though almost 95,000 had been submitted by the Trustees into the Protocol. This was the first time the Plan Administrator learned the Trustees were abandoning their claims on approximately 15,000 of the loans the Plan Administrator reviewed as part of the Protocol. It was not until weeks later, after careful review of the

¹ Although the Court had ordered the Trustees on October 23, 2017 to make Mr. Aronoff available for an additional deposition, the Plan Administrator agreed to postpone that deposition until the week before trial as an accommodation given Mr. Aronoff's personal circumstances. It is particularly egregious that the Trustees would not disclose his purported new "opinion" until that deposition on Friday afternoon.

loan level data submitted with Mr. Aronoff's report, that the Plan Administrator was able to appreciate that the Trustees had also withdrawn more than 77,000 additional breach claims on loans that remained in the case. The Plan Administrator promptly requested additional information on the basis for the withdrawal of these loans and claims so that the Plan Administrator could understand, among other things, what this significant abandonment of claims meant for the reliability of the Trustees' loan review process during the Protocol. (*See, e.g.*, Ex. A (2017.07.21 Letter from Cosenza to Shuster).) The Trustees refused to provide that information or a deposition witness to speak to these issues, claiming the information to be privileged and attorney work product. (Ex. B (2017.07.24 Letter from Shuster to Cosenza).)

On July 27, 2017, the Plan Administrator submitted the Grice Rebuttal Report. Unlike Mr. Aronoff, who had limited his opinion to those loans and claims that remained in the case, Mr. Grice addressed the withdrawn loans and breach claims, noting that the claims that were abandoned "tend[] to confirm that the process that led to the submission of those claims suffers from flaws that have produced unreliable results." (Grice Rebuttal at ¶¶ 67-68, 97.) Although Mr. Aronoff was afforded an opportunity to respond to Mr. Grice, Mr. Aronoff's reply report was **silent** on this issue.

During his initial deposition on October 6, Mr. Aronoff confirmed he did not know why these claims were withdrawn, and that such analysis was outside the scope of his opinions. (Ex. C, Aronoff Tr. 169:20-170:9; 172:19-173:22; 174:7-176:5 ("the focus of the report, the rebuttal and the reply, from my perspective, were the 76,044 loans"); 284:6-12.) The Trustees also blocked Mr. Aronoff from providing any information he had on the decision making process regarding the withdrawn loans. (*Id.* at 173:7-16.) Another Trustee witness, Edmund Esses, similarly testified that he did not know why the loans were withdrawn, after having been given an instruction not to provide information about who might have this information. (*See, e.g.*, Ex. D (Esses Tr. 133:9-21).)

Having been blocked from obtaining this information during discovery, the Plan Administrator understood from the Trustees' privilege objections that the Trustees would not seek to offer evidence on a topic that was outside the scope of every one of their expert witnesses' opinions, and otherwise had been shielded from discovery. That suddenly changed on October 19, when the Trustees submitted their pretrial brief and, in a 180 degree reversal, sought to explain the decision to withdraw 40% of all claims previously asserted as merely a means to make the hearing more "focused and manageable." (RMBS Trustees' Pretrial Brief at 12 n. 7).

After the Plan Administrator challenged footnote 7 both as a reversal of the Trustees' prior discovery position and as factually inaccurate, the Trustees apparently recognized they had placed themselves in an untenable position—albeit entirely of their own making. As a result, only days after attempting to belatedly supplement the opinion of another one of their experts, Mr. Finkel, the Trustees attempted to do the same thing again—only this time by eliciting a scripted examination from Mr. Aronoff at the close of his deposition. This "re-direct" examination, which was clearly outside of the scope of the cross examination that preceded it, revealed for the first time new opinions on the withdrawn loans from Mr. Aronoff. For example, Mr. Aronoff testified about the different parameters applied to the population of loans still at issue here versus what was submitted in the Protocol, topics that appear nowhere in Mr. Aronoff's reports, and which he had previously testified at his deposition were outside the scope of his opinion. (The entirety of Mr. Aronoff's "redirect" examination at the November 17,

2017 deposition appears at Exhibit E.) The Plan Administrator immediately recognized what the Trustees were attempting to do, and objected to the testimony. But the Trustees persisted, and refused to offer a basis on the record for the validity of their examination. (Ex. E at 620:8-20 and 631:21-632:2.)

The reasons the Trustees should not be permitted to rely on Mr. Aronoff's 11th hour "redirect" testimony at trial are legion: the elicited testimony is outside the scope of the cross examination at his deposition on November 17; it's outside the scope of all three of his expert reports and his expert opinion in this matter; Mr. Aronoff's prior deposition testimony makes clear that he did not know why the loans were withdrawn and was not offering any opinions about the withdrawn loans; and the Plan Administrator was denied, on the grounds of purported attorney-client privilege and work product, from obtaining discovery (including from the Trustees' counsel) that would have allowed it to test the accuracy of Mr. Aronoff's statements.²

At this late stage—after multiple rounds of expert reports, almost twenty depositions, and literally the last business day before trial—there is no amount of disclosure by the Trustees concerning this new opinion by Mr. Aronoff that would remedy the prejudice to the Plan Administrator were the Trustees permitted to rely on Mr. Aronoff's new opinion. Accordingly, we respectfully request that the Trustees be prohibited from referencing Mr. Aronoff's new testimony during opening statements tomorrow, and from being permitted to amend the scope of his expert testimony at trial.

Respectfully submitted,

/s/ Todd G. Cosenza

Todd G. Cosenza

cc: All counsel (*via* email)

² The new testimony elicited from Mr. Aronoff, which addresses almost exclusively claims withdrawn from the Trustees' so-called "big four" breach categories (income, debt, occupancy and DTI), is inconsistent with the breezy explanation in footnote 7 that the Trustees merely withdrew 24 different breach categories so that they could focus on the four categories of their choosing. The facial inconsistency between this explanation and the evidence the Trustees themselves adduced from Mr. Aronoff highlights why the Plan Administrator's prior requests for discovery on the withdrawn loans was appropriate, and the prejudice that would result if the Trustees were permitted now to offer one-sided explanations of their review process.

EXHIBIT A

July 21, 2017

VIA EMAIL

Michael S. Shuster
Holwell Shuster & Goldberg
750 Seventh Avenue, 26th Floor
New York, NY 10019

Re: In re Lehman Brothers Holdings Inc., et al., Ch. 11 Case No. 08-13555 (SCC)

Dear Michael,

We write on behalf of the Plan Administrator in the above-referenced bankruptcy proceeding. After repeated requests, you finally confirmed, in an email dated July 8, 2017, that the Trustees do not intend to pursue claims ("Breach Claims") on 15,107 Disputed Mortgage Loans (the "Withdrawn Loans") submitted into the Protocol, representing nearly 17% of the loans submitted into the Protocol. Although the Trustees represented that they had submitted the claims on these loans in good faith during the Protocol process, they were excluded from the loans listed in Exhibit 1 to the expert reports of James H. Aronoff (the "Aronoff Report") and Karl N. Snow (the "Snow Report"), both dated June 1, 2017, which prompted our inquiry about their status. The Trustees failed to follow the well-established process for communicating about decisions regarding the allowance or withdrawal of claims and instead left it to the Plan Administrator to uncover this highly material and prejudicial decision. Moreover, as discussed below, you still refuse to disclose anything else about the circumstances or timing of this decision.

As you well know, significant estate resources were expended in litigating, on a loan-by-loan and claim-by-claim basis, whether the Trustees had established the elements of a valid repurchase claim as to the Withdrawn Loans. The Plan Administrator is therefore entitled to understand: (i) The date the Trustees first decided to withdraw their claims on the Withdrawn Loans; (ii) the rationale for withdrawing these claims; and (iii) who was involved in these decisions (the "Requested Information"). We have requested this information on numerous occasions, including on June 13, June 16, July 7, and July 9. You have refused to provide this information, refused to voluntarily withdraw and agree to expungement of these claims and have stated that the Trustees will view any motion to disallow and expunge the claims on the Withdrawn Loans as in violation of the RMBS Settlement Agreement. This position is impossible to reconcile with the fact that you are no longer submitting claims on these loans at the estimation proceeding.

If the Trustees are unwilling to provide the Requested Information, then the Plan Administrator is entitled to seek it through fact depositions. Accordingly, please provide by July 24, 2017 the Requested Information or the names and identities of two persons most knowledgeable about the Trustees' decision to forego claims on the Withdrawn Loans.

Although we have been discussing the Withdrawn Loans with you for well over a month, and you are fully aware that the Plan Administrator is now preparing its defenses to the Trustees' claims in the estimation proceeding, you neglected to inform us that in addition to the Withdrawn Loans, the Trustees also apparently have withdrawn thousands of individual Breach Claims ("Withdrawn Claims") on the remaining roughly 73,000 Disputed Mortgage Loans. The Plan Administrator only recently uncovered the Withdrawn Claims through its independent analysis of the exhibits to the Aronoff Report.

We are entitled to understand immediately the full extent of the Withdrawn Claims. During the Protocol, each individual Breach Claim on a Reviewed Loan was assigned a "Breach ID." Please provide us with an Excel spreadsheet listing the Breach IDs for the Withdrawn Claims by close of business today. Alternatively, please provide a list of Withdrawn Claims that identifies each claim that was withdrawn and the Disputed Mortgage Loan on which the claim was made. If the Trustees fail to provide this information promptly, the Plan Administrator will seek relief from the Court.

The Plan Administrator continues to reserve all its rights.

Sincerely,

A handwritten signature in dark ink, appearing to read "Todd G. Cosenza". The signature is fluid and cursive, with the first name "Todd" being the most prominent.

Todd G. Cosenza

cc: All Counsel (*via* email)

EXHIBIT B

HOLWELL SHUSTER & GOLDBERG LLP

750 Seventh Avenue, 26th Floor
New York, New York 10019
Tel: (646) 837-5151
Fax: (646) 837-5150
www.hsgllp.com

Michael S. Shuster
646-837-5153
mshuster@hsgllp.com

July 24, 2017

VIA EMAIL

Todd Cosenza
Willkie Farr & Gallagher
787 Seventh Avenue
New York, NY 10019

Re: *In re Lehman Brothers Holdings Inc. RMBS Claims Estimation Hearing*

Dear Todd:

We write on behalf of the RMBS Trustees in response to your letters dated July 21, 2017 regarding (1) the loans that were not included in the Trustees' affirmative expert reports, (2) your clients' approval of 156 Claim Files that they initially rejected, and (3) your clients' deficient disclosures regarding their experts' sampling methodologies.

With respect to the loans that are not addressed in the RMBS Trustees' expert reports, your letter contains significant mischaracterizations of our discussions on the subject to date. As an initial matter, as we made clear in our letter dated July 10, 2017, and had previously advised you (June 13, June 22, July 7, July 8), the Trustees will not submit evidence or otherwise pursue claims with respect to those loans at the Estimation Hearing. Therefore, there is no basis for your assertion that the Trustees "failed to follow the well-established process for communicating decisions regarding allowance or withdrawal of claims" (July 21, 2017 Letter from T. Cosenza to M. Shuster at 1.) I note that you advised me by letter dated July 21, 2017 that your clients were accepting breach claims they previously rejected. There is no difference in principle between your clients advising ours via a letter from counsel of breaches they will no longer challenge and our clients advising yours by the same means of breaches as to which they will not present evidence at the Estimation Hearing.

Your clients' demand for information concerning the timing and rationale of the RMBS Trustees' decision not to include these loans and breaches in their expert reports are unfounded. As we advised you by email dated July 8 in response to the initial request for the same information, the RMBS Trustees are under no obligation, whether pursuant to Exhibit G, the Protocol, or any other authority, to provide information concerning confidential and privileged discussions. They will not do so. Nor is the Plan Administrator entitled to seek such privileged

information through fact depositions, as you suggest. The RMBS Trustees will not identify deponents for that purpose.

It is as you well know common practice for plaintiffs to pare down their claims in preparation for trial. Forcing plaintiffs to disclose their confidential and privileged communications concerning the strategy for the presentation of their claims at trial would only disincentivize them to do so and create inefficiencies and increased costs for all participants. It would be bad law and bad policy. And that, in addition to straightforward application of the principles of attorney-client privilege and the work product doctrine, is why it is not required.

In addition to information protected from disclosure concerning the RMBS Trustees' and their lawyers' deliberations and thought processes, your letter requests additional detail regarding breach claims that are not included in Aronoff Report. The RMBS Trustees have provided considerable and detailed information concerning the claims that are the subject of their expert reports. The Plan Administrator is fully capable of identifying the breach claims that are *not* included. Whether the Plan Administrator should expend the resources of the estate in that effort is for it and its lawyers to decide. The exercise of actually doing so should be straightforward. As the Plan Administrator is fully aware, the Trustees submitted 193,148 claims on 94,566 loans into the Protocol, and rescinded 6,508 claims on 3,495 loans through Step 3, leaving a total of 186,640 claims on 91,071 loans on which there were breach claims. (See the January 2017 Notice of Monthly Delivery.) The Trustees have now identified all loans for which they will submit evidence at the Estimation Hearing. (See Exhibits 1 and 15 to the initial Aronoff Report.) The Plan Administrator can identify the loans as to which claims will not be the subject of the Trustees' presentation at the Estimation Hearing by comparing Aronoff Exhibit 1 to the January 2017 Notice of Monthly Delivery. Indeed, the Plan Administrator seems to have already carried out this work. The RMBS Trustees are not obligated to devote additional resources, which come out of the trust funds available to certificateholders, to identify claims that they will not present at the Estimation Hearing. That would be a waste of resources already diminished by Lehman's securitization of tens of thousands of breaching loans and its unjustified refusal to accept breach claims whose validity is manifest. Nonetheless, as a courtesy, we have performed the work that we believe the Plan Administrator could or did itself perform. Exhibit A at your request identifies the breach claims that were submitted into the Protocol but were not included in the Aronoff Report.

The Plan Administrator's complaints of prejudice and waste as a result of certain loans and claims not being the subject of the RMBS Trustees' expert reports are hollow. The Plan Administrator argued, over the RMBS Trustees' objections, for a process that required review of every single one of over 200,000 mortgage loans, at great expense to the estate and to certificateholders. That exercise, not the fact that some portion of the RMBS Claims are not included in the Aronoff Report, is where the lion's share of costs has been incurred. The RMBS Trustees' decision regarding the analysis and presentation of certain of their claims in light of the pending, circumscribed, Estimation Hearing has not visited additional costs on the estate.

I note that your clients have now accepted that 156 loans have "Valid Claims" that they previously rejected, under the guise of continuing to review loans pursuant to the Protocol. First, the Protocol process has been suspended at your clients' request. (Settlement Agreement at § 3.02.) Second, the fact that your clients have now accepted breaches they previously rejected

shows that, with the benefit of further review, and with a trial on the immediate horizon, parties can re-evaluate positions. The RMBS Trustees assert no prejudice from the fact that your clients have reversed themselves on 156 loans, though they note that if the Plan Administrator were truly continuing to review loans in good faith, the number of reversals would be orders of magnitude higher.

Finally, your attempt to paper over your clients' deficient and untimely disclosures of the materials their experts relied upon, by equating the selection of loans for analysis by Messrs. Grice and Castro to the exemplar loans used by the Trustees' expert James H. Aronoff, is without merit. The exemplar loans detailed in Mr. Aronoff's report are there to illustrate different types of breaches and sources of evidence pertinent to the Claims. Unlike Messrs. Grice and Castro, Mr. Aronoff did not purport to review a "sample" of loans, nor did he attempt to extrapolate a breach rate or other population-wide conclusions based on any such sample that he reviewed. I note that, in addition to purporting to review a sample set of loans from which they draw broad inferences, Messrs. Grice and Castro also present exemplar loans to illustrate their points and the Plan Administrator has also listed additional exemplars not discussed by Messrs. Grice and Castro. In any event, we are available to meet-and-confer at a convenient time regarding these matters.

We continue to await production of the policies and procedures that your clients agreed to provide on July 14. Please provide those materials forthwith.

The Trustees reserve all rights.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Michael S. Shuster", with a stylized flourish at the end.

Michael S. Shuster

cc: All counsel (via email)

EXHIBIT C

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 08-13555 (SCC)

5 -----x
6 IN RE

7 LEHMAN BROTHERS HOLDING, INC., et al.,
8 Debtors.
9 -----x

10 787 Seventh Avenue
11 New York, New York

12 October 6, 2017
13 9:36 a.m.

14 VIDEOTAPED DEPOSITION of JAMES H.
15 ARONOFF, taken by the Debtors, held at the
16 aforementioned time and place, before Sherri
17 Flagg, a Registered Professional Reporter,
18 Certified LiveNote Reporter, and Notary Public.

19 * * *
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25

<p style="text-align: right;">Page 166</p> <p>1 James H. Aronoff</p> <p>2 policies had been removed, which constitutes, I</p> <p>3 don't recall, 1100 or so I think. I'm not</p> <p>4 sure. That's a guess.</p> <p>5 Q. 1100 or so claims?</p> <p>6 A. Loans.</p> <p>7 Q. Loans?</p> <p>8 A. So the title policy claim breach</p> <p>9 findings were removed; but to the extent a loan</p> <p>10 with that breach finding had another breach</p> <p>11 finding, it's still in the pool.</p> <p>12 Q. Right.</p> <p>13 A. So I think there are only 1100</p> <p>14 that were standalone. But forget that number,</p> <p>15 it's about that.</p> <p>16 And then I think there are 30,</p> <p>17 about 30, 34 or so, that, during the exchange</p> <p>18 of expert reports, we have withdrawn based on</p> <p>19 specific rebuttal comments and reviews that we</p> <p>20 concurred with. And, similarly, I think there</p> <p>21 are about 200 loans that have been accepted by</p> <p>22 the Plan Administrator since we started the</p> <p>23 exchange of expert reports.</p> <p>24 So whatever those numbers are less</p> <p>25 Exhibit 1 should be the number still in</p>	<p style="text-align: right;">Page 168</p> <p>1 James H. Aronoff</p> <p>2 A. Is that the question?</p> <p>3 Q. Yes, sir.</p> <p>4 MR. HEALY: Objection, form.</p> <p>5 A. Yes, whether or not they'd been</p> <p>6 accepted, that -- yes, that's my opinion.</p> <p>7 Q. And was it your opinion that each</p> <p>8 breach claim asserted on all the loans listed</p> <p>9 on Exhibit 1 met the applicable materiality</p> <p>10 standard, as you call it, under the</p> <p>11 corresponding MLSAA?</p> <p>12 A. The breach findings that were</p> <p>13 submitted met that standard, yes.</p> <p>14 Q. And by the way, you understand</p> <p>15 what I mean when I say MLSAA?</p> <p>16 A. Oh, one of the governing</p> <p>17 documents.</p> <p>18 Q. Okay. Thank you.</p> <p>19 And you've just -- I think you</p> <p>20 just told me you've revised your opinions</p> <p>21 slightly with respect to a number of loans</p> <p>22 that, through the back-and-forth of this</p> <p>23 process, have been rescinded, I suppose is the</p> <p>24 best way to put it?</p> <p>25 MR. HEALY: Objection to form,</p>
<p style="text-align: right;">Page 167</p> <p>1 James H. Aronoff</p> <p>2 dispute.</p> <p>3 Q. Okay. So at the time you issued</p> <p>4 this report, though -- if you go back to your</p> <p>5 summary of opinions in your report, please, for</p> <p>6 me.</p> <p>7 A. Yes.</p> <p>8 Q. You said in the second paragraph</p> <p>9 that, in your opinion, that (as read):</p> <p>10 Each of the loans identified on</p> <p>11 Exhibit 1, there are one or more breaches</p> <p>12 of the representations and warranties</p> <p>13 made by Lehman with respect to such</p> <p>14 mortgage loans and each such breach meets</p> <p>15 the materiality standard, materially and</p> <p>16 adversely affected the value of the loan</p> <p>17 and/or the interests of the</p> <p>18 certificateholders in the loan.</p> <p>19 So was it your opinion, when you</p> <p>20 issued this report, that each breach claim</p> <p>21 asserted on all the loans listed on Exhibit 1</p> <p>22 constituted a breach of an applicable</p> <p>23 representation or warranty under the</p> <p>24 corresponding mortgage loan sale and assignment</p> <p>25 agreement?</p>	<p style="text-align: right;">Page 169</p> <p>1 James H. Aronoff</p> <p>2 mischaracterizes the record. And, two, I</p> <p>3 don't know that he said that he revised</p> <p>4 his opinion with respect to the number of</p> <p>5 loans.</p> <p>6 A. All I said is they're no longer in</p> <p>7 dispute. My opinion with respect to those</p> <p>8 loans hasn't changed.</p> <p>9 Q. So which loans were you referring</p> <p>10 to when you referenced the 30 to 34 loans that,</p> <p>11 through the exchange of expert reports, have</p> <p>12 been withdrawn?</p> <p>13 A. Those were loans that I opined on</p> <p>14 in the context of this report and it's been</p> <p>15 demonstrated that the basis of my opinion with</p> <p>16 respect to any particular loan was in error.</p> <p>17 And to the extent there was a factual error</p> <p>18 identified and it changed my -- and it changed</p> <p>19 my opinion, it was withdrawn.</p> <p>20 Q. Now, you understand that the</p> <p>21 trustees have withdrawn a significant number of</p> <p>22 the breach claims they asserted during the</p> <p>23 protocol, right?</p> <p>24 MR. HEALY: Objection to form,</p> <p>25 mischaracterizes the record.</p>

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1 James H. Aronoff

2 A. What's the question, please?

3 (Requested portion read.)

4 A. I don't know if it's significant

5 or not. I know there are loans that have been

6 withdrawn even between the status report I

7 cited and Exhibit 1. It went from 90 to 76,

8 but I don't know if there were other iterations

9 of that.

10 Q. That's loans, correct?

11 A. That's loans.

12 Q. Okay. Do you know how many claims

13 have been withdrawn by the trustees?

14 MR. HEALY: Objection to form,

15 vague, ambiguous and confusing.

16 A. I still don't.

17 Q. Do you have any explanation you

18 can offer me here today for the withdrawal of

19 those claims?

20 THE WITNESS: Are you going to say

21 something?

22 MR. HEALY: I am going to say

23 something.

24 As you know, Mr. Davis, the

25 Exhibit G prohibits inquiry into any

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1 James H. Aronoff

2 communications that the expert may have

3 had with consulting experts, counsel or

4 various other parties. And so I think

5 you may be straying into that area.

6 I think you may be able to ask an

7 appropriate predicate question to which I

8 would not interpose an objection or at

9 least not interpose an objection subject

10 to a nonwaiver agreement. But I don't

11 think the question you've asked is the

12 right question.

13 MR. DAVIS: Okay. Let me ask a

14 different question then. We'll try it.

15 BY MR. DAVIS (continuing):

16 Q. Just yes or no: Do you know why

17 the trustees rescinded certain breach claims?

18 MR. HEALY: Objection. You've now

19 changed the description to which I object

20 on the grounds of its inaccuracy. So I'd

21 ask you to reframe that.

22 MR. DAVIS: I'm sorry, what's

23 inaccurate about this question?

24 MR. HEALY: Rescinded. I don't

25 think they've rescinded claims.

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1 James H. Aronoff

2 MR. DAVIS: The trustees haven't

3 rescinded breach claims?

4 MR. HEALY: I think they've

5 advised you that they are not pursuing

6 claims at the estimation hearing.

7 MR. DAVIS: Is there a difference?

8 I don't understand the difference.

9 MR. HEALY: I'm not going to argue

10 with you. I'm just telling you the

11 language which was used to communicate it

12 to you. You're conducting the

13 examination. I'm interposing an

14 objection on the grounds that your

15 question is inaccurate as framed.

16 BY MR. DAVIS (continuing):

17 Q. Okay, let me ask the question

18 then.

19 Just yes/no: Do you know why the

20 trustees have advised the Plan Administrator

21 that they are not pursuing certain breach

22 claims at the estimation hearing?

23 MR. HEALY: I'm prepared to let

24 him answer that question subject to an

25 agreement that his answering the question

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1 James H. Aronoff

2 will not be asserted to be a waiver of

3 any applicable privilege or protection

4 under Exhibit G.

5 MR. DAVIS: That's fine.

6 A. No.

7 Q. So you were not involved in the

8 decision-making process concerning the

9 trustees' decision to not pursue certain breach

10 claims at the estimation hearing?

11 MR. HEALY: He's advised you that

12 he does not know, and you are now asking

13 him to testify as to discussions that he

14 may have had with the trustees' counsel,

15 consulting experts or others. And he's

16 instructed not to answer that question.

17 Q. Was it important to the opinion

18 that you're giving in this case to understand

19 the basis for the trustees' decision not to

20 pursue certain of the breach claims in this

21 case?

22 A. No.

23 MR. HEALY: You beat me to it.

24 THE WITNESS: Sorry.

25 MR. HEALY: That's okay, go ahead.

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1 James H. Aronoff

2 I was going to instruct you not to

3 disclose the content of any

4 communications with counsel in answering

5 the question. You have obviated that

6 because you haven't, so thank you.

7 Q. And why was it not important to

8 your opinion in this case to understand the

9 basis for the trustees' decision not to pursue

10 certain of the breach claims?

11 MR. HEALY: I'm going to give you

12 the same instruction that I would have

13 given you to the last question.

14 And I object to the question as

15 argumentative and irrelevant and --

16 that's it.

17 THE WITNESS: So can I answer?

18 MR. HEALY: You can answer subject

19 to the stricture that I've given you.

20 A. Because I believe that the ask was

21 to provide the summary and the two opinions we

22 just discussed with respect to a discrete

23 population of loans. And my examination went

24 to inquiries and questions about those specific

25 loans, the information contained in the

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1 James H. Aronoff

2 narratives and the claim files, the supporting

3 documentation and data used to support those

4 claims, the types of breach findings that were

5 put forth.

6 And I viewed my opinions as

7 limited to the information that was available

8 to me with respect to these pools. And I felt

9 I had more than sufficient information and more

10 than sufficient data and insights into what was

11 done, how it was done. And I had the results

12 in front of me to render and offer the opinions

13 that I offered here.

14 Q. So your opinions at trial, then,

15 are going to be limited to the claims, breach

16 claims, that are still at issue in the

17 estimation proceeding?

18 MR. HEALY: Objection to form.

19 His reports expressly reserve the right

20 to respond to arguments advanced by other

21 experts. And I don't -- I'm sure Mr.

22 Aronoff -- you're not asking Mr. Aronoff

23 to waive any right to do so.

24 MR. DAVIS: He can answer.

25 A. I guess I'll do what I'm asked to

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1 James H. Aronoff

2 do when I'm asked to do it. That wasn't -- the

3 focus of the report, the rebuttal and the

4 reply, from my perspective, were the 76,044

5 loans on Exhibit A.

6 Q. Are you going to opine --

7 A. Exhibit 1. I said A.

8 Q. Are you going to opine at trial on

9 the process by which the trustees submitted

10 breach claims to the protocol?

11 MR. HEALY: Objection to the form

12 of the question. Vague, ambiguous. The

13 reports obviously recite the process. I

14 think it's vague, ambiguous and confusing

15 in light of that and other things.

16 A. I've been asked to make myself

17 available to testify at the hearing in

18 connection with the subject matter of my

19 reports. And to the extent that changes, I'm

20 sure I'll be notified and you will as well.

21 Q. Are the breach claims that are no

22 longer being pursued important to -- strike

23 that.

24 Let's look at Table 1, which is on

25 the next page, please.

Page 177

1 James H. Aronoff

2 A. I'm sorry, what page are we on?

3 Q. Page 3. Now, just a quick

4 question: The third column here, Purchase

5 Price of Affected Loans, do you see that?

6 A. Yes.

7 Q. There's a footnote, Footnote 6. I

8 think that references the information in that

9 column, at least in part. Is that right?

10 A. Yes.

11 Q. Now, what does the term "purchase

12 price" refer to?

13 A. I assumed -- since I didn't

14 independently, as I noted, verify or it was

15 provided to me to put in this chart, I assumed

16 it meant the aggregate of the purchase price in

17 connection with these breach findings as

18 described in the claims that have been

19 submitted.

20 Q. Have you updated this chart at all

21 since you issued this report?

22 A. No.

23 Q. Do you intend to do that for

24 trial?

25 A. I hadn't really thought about it.

<p style="text-align: right;">Page 178</p> <p>1 James H. Aronoff</p> <p>2 I don't think so.</p> <p>3 Q. Would you take a look at Footnote</p> <p>4 No. 7. It says (as read):</p> <p>5 Many of the mortgage loans have</p> <p>6 multiple breach findings and therefore</p> <p>7 the sum of the number of the affected</p> <p>8 loans and the related purchase price</p> <p>9 columns will be greater than the number</p> <p>10 of mortgage loans and the total purchase</p> <p>11 price for the claims.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Can you explain to me, what is the</p> <p>15 difference between the Purchase Price column</p> <p>16 and the Total Purchase Price?</p> <p>17 A. Sure, I can do that.</p> <p>18 Q. Please do, thank you.</p> <p>19 A. If you read across, everything's</p> <p>20 fine. So take the first column, there's 34,</p> <p>21 323, 34,323 affected loans with a purchase</p> <p>22 price of that number. But if you add them up</p> <p>23 like we normally do and try to come up with a</p> <p>24 number at the bottom, it's a nonsense number.</p> <p>25 The total purchase price, if you</p>	<p style="text-align: right;">Page 180</p> <p>1 James H. Aronoff</p> <p>2 breach finding that is a defect that was</p> <p>3 identified that purported to reach a</p> <p>4 representation and warranty, was, in fact,</p> <p>5 material and adverse to the value of the loan</p> <p>6 or the interest of certificateholders by</p> <p>7 ascertaining whether or not that defect</p> <p>8 increased the risk of loss to the investor.</p> <p>9 Q. Did Duff & Phelps ever determine</p> <p>10 that a valid breach identified by the loan</p> <p>11 review firms did not materially and adversely</p> <p>12 affect the value of the loan or the interests</p> <p>13 of the certificateholders?</p> <p>14 A. Yes.</p> <p>15 Q. Are any examples of that decision</p> <p>16 reflected anywhere in your expert reports?</p> <p>17 A. No, because they didn't result in</p> <p>18 claims to the trustee.</p> <p>19 Q. Can you give me an example of such</p> <p>20 a determination?</p> <p>21 A. Yes, I can. For example, there</p> <p>22 was instituted, with respect to a</p> <p>23 misrepresentation of income, a 5 percent</p> <p>24 tolerance rule so that to the extent it was</p> <p>25 discovered in the course of reviewing a loan</p>
<p style="text-align: right;">Page 179</p> <p>1 James H. Aronoff</p> <p>2 added those up, would be way overstated because</p> <p>3 of -- because it wasn't controlled for if a</p> <p>4 loan was in here more than once.</p> <p>5 So if the loan appeared in three</p> <p>6 of these columns, its purchase price would</p> <p>7 appear in three of those columns and would</p> <p>8 overstate the total. Similarly, with the</p> <p>9 number of affected loans. You're going to get</p> <p>10 a number, as you can see, well in excess of</p> <p>11 76044.</p> <p>12 Q. Let's look at pages 11 and 12 of</p> <p>13 your report. So at the top of page 12</p> <p>14 actually, you list some steps that Duff &</p> <p>15 Phelps undertook on behalf of the trustees. Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And one of them is confirm the</p> <p>19 materiality of the breaches identified. Do you</p> <p>20 see that?</p> <p>21 A. Yes.</p> <p>22 Q. How did Duff & Phelps confirm the</p> <p>23 materiality of those breaches?</p> <p>24 A. As we discussed earlier, I</p> <p>25 ascertained whether or not any particular</p>	<p style="text-align: right;">Page 181</p> <p>1 James H. Aronoff</p> <p>2 file, the income that was stated by the</p> <p>3 borrower was overstated by less than 5 percent</p> <p>4 of what was determined to be their actual</p> <p>5 income, the unmisrepresented income. And those</p> <p>6 made it through the screens, and the loan</p> <p>7 review firm submitted that.</p> <p>8 There had been a determination</p> <p>9 made at Duff that, in order to avoid</p> <p>10 discussions about a one dollar difference in</p> <p>11 income and whether that theoretically increases</p> <p>12 the risk of loss or not, a determination was</p> <p>13 made to only identify those that were</p> <p>14 meaningful or significant. So 5 percent was</p> <p>15 the tolerance. And there were other rules that</p> <p>16 were engaged along the way that I discuss in my</p> <p>17 report.</p> <p>18 Similarly, there could have</p> <p>19 been -- particularly with respect to the three</p> <p>20 pools that had underwriting guideline breaches,</p> <p>21 there may have been the identification of, in</p> <p>22 the opinion of the due diligence firm, a</p> <p>23 violation of the guidelines that, upon our</p> <p>24 review, we viewed as technical and not</p> <p>25 necessarily of the magnitude that would have</p>

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1 James H. Aronoff
2 minutes. It will take 30 seconds.
3 MR. HEALY: Okay.
4 VIDEO TECHNICIAN: The time is 7
5 p.m. We're off the record.
6 (Recess taken.)
7 VIDEO TECHNICIAN: The time is 7
8 p.m. We're on the record.
9 EXAMINATION BY
10 MR. HEALY:
11 Q. Mr. Aronoff, would you look at
12 your initial report, please. It's been marked
13 as Exhibit 67. In particular, look at page 9
14 of that.
15 A. Okay.
16 Q. Do you see that, and the
17 discussion under the heading Materials Relied
18 On?
19 A. Yes.
20 Q. I think you were asked questions
21 before on whether you -- what listed materials
22 you relied on in Appendix C. Do you recall
23 that questioning?
24 A. Yes.
25 Q. Okay. Did you also rely on the

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1 James H. Aronoff
2 exhibits that are attached to your report?
3 A. Yes.
4 Q. You were asked some questions
5 about whether the number of loans that you
6 expect to opine upon at the hearing has been
7 reduced from the 76,044 that are referenced in
8 your report. Do you recall those questions?
9 A. Yes.
10 Q. And you identified some factors
11 which had reduced the number of loans. Do you
12 recall that?
13 A. Yes.
14 Q. Okay. Are you also aware that
15 there was one trust that has opted out of the
16 proceeding?
17 A. Yes.
18 Q. Okay. And so you would expect
19 that that has reduced the number of loans
20 somewhat?
21 A. Yes.
22 Q. Okay. And are you also aware that
23 there are one or two trusts that have
24 terminated since your report was issued?
25 A. I'm -- yes.

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1 James H. Aronoff
2 Q. Okay. And do you expect that that
3 may also reduce the number of loans you will
4 address at the hearing?
5 A. I would expect that.
6 Q. You were asked some questions
7 about loans that had been -- as to which claims
8 have been asserted during the protocol process
9 but which are not the subject of your reports.
10 Have you been asked to offer an
11 opinion with respect to any of those loans?
12 A. I have not.
13 Q. Okay. You were asked some
14 questions about the repurchase protocol and I
15 think you were asked a question as to -- strike
16 that.
17 Do you have a view, sir, as to
18 whether or not the repurchase provisions
19 provide for a windfall to investors?
20 MR. DAVIS: Object to the form.
21 A. They don't provide any exception
22 to the repurchase provisions based on a
23 windfall.
24 Q. Okay. But if the provisions in
25 the repurchase protocol are carried out, does

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1 James H. Aronoff
2 that result in a windfall to investors, in your
3 view?
4 MR. DAVIS: Same objection.
5 A. No.
6 Q. You were asked some questions
7 about mortgage debt -- strike that.
8 You were asked some questions
9 about debt that had been incurred after the
10 closing of a loan and breaches that were based
11 upon the nondisclosure of such debt. Do you
12 recall that?
13 A. Yes.
14 Q. Okay. I'd like to focus on -- I
15 think you addressed installment debt. I'd like
16 to focus on post-closing mortgage debt.
17 A. Okay.
18 Q. Was there any requirement for such
19 a claim that there had been preclosing credit
20 inquiries in order to cite a post-closing
21 mortgage debt as the basis for a breach?
22 MR. DAVIS: Object to the form.
23 A. No. No, there isn't.
24 Q. Okay.
25 A. The only limitation would be that

<p style="text-align: right;">Page 286</p> <p>1 James H. Aronoff</p> <p>2 the mortgage debt is evident in the month</p> <p>3 following -- no later than the month following</p> <p>4 the month after the subject closed.</p> <p>5 Q. Okay. You were asked some</p> <p>6 questions about whether the process was the</p> <p>7 subject of opinion, and I wanted to just</p> <p>8 clarify what you were referring to.</p> <p>9 As part of your expert opinion,</p> <p>10 are you addressing the loan review process that</p> <p>11 resulted in breach findings that may have been</p> <p>12 submitted during the protocol process?</p> <p>13 MR. DAVIS: Object to the form,</p> <p>14 leading.</p> <p>15 A. Yes.</p> <p>16 MR. HEALY: That's all I had.</p> <p>17 FURTHER EXAMINATION</p> <p>18 BY MR. DAVIS:</p> <p>19 Q. Mr. Aronoff, when I asked you</p> <p>20 whether you were going to offer an opinion on</p> <p>21 the loan review process that was conducted in</p> <p>22 connection with the protocol, you told me no;</p> <p>23 is that right?</p> <p>24 MR. HEALY: Objection to form. I</p> <p>25 think that misstates his testimony.</p>	<p style="text-align: right;">Page 288</p> <p>1 James H. Aronoff</p> <p>2 To the extent the reviewing of</p> <p>3 loans and the determination that breach</p> <p>4 findings were material and adverse was a</p> <p>5 necessary part of the protocol procedures</p> <p>6 that the parties agreed to undertake,</p> <p>7 those are part of my opinion to the</p> <p>8 extent they relate to loans that are the</p> <p>9 subject of my opinion.</p> <p>10 Is that correct?</p> <p>11 MR. HEALY: Objection to form.</p> <p>12 A. That sounds like what I said. I</p> <p>13 don't have the benefit of the reader in front</p> <p>14 of me.</p> <p>15 Q. What about to the extent they</p> <p>16 relate to loans that are not the subject of</p> <p>17 your opinion?</p> <p>18 MR. HEALY: Objection, vague,</p> <p>19 ambiguous and confusing.</p> <p>20 Q. Are you going to opine on the</p> <p>21 protocol process, the process of loan review</p> <p>22 under the protocol, to the extent it relates to</p> <p>23 loans that are not part of your opinion here in</p> <p>24 these reports?</p> <p>25 A. I have not been asked to.</p>
<p style="text-align: right;">Page 287</p> <p>1 James H. Aronoff</p> <p>2 A. And I'm not sure if that's the</p> <p>3 specific question you asked. There was some</p> <p>4 confusion in my mind about, when you referred</p> <p>5 to process, whether you were using "process" as</p> <p>6 a synonym for the protocol or whether you were</p> <p>7 referring simply to the loan review process</p> <p>8 part of the protocol.</p> <p>9 Q. I don't understand the difference</p> <p>10 between the two. I'm sorry, can you help me?</p> <p>11 A. I'm not offering an opinion, nor</p> <p>12 do I have information beyond the loan review</p> <p>13 process, with respect to the protocol. To the</p> <p>14 extent the reviewing of loans and the</p> <p>15 determination that breach findings were</p> <p>16 material and adverse was a necessary part of</p> <p>17 the protocol procedures that the parties agreed</p> <p>18 to undertake, those are part of my opinion to</p> <p>19 the extent they relate to the loans that are</p> <p>20 the subject of my opinion.</p> <p>21 I have not been asked to offer an</p> <p>22 opinion, nor do I expect to, with respect to</p> <p>23 any other aspect of the protocol, what happened</p> <p>24 under the protocol or anything else.</p> <p>25 Q. Okay. So you said that (as read):</p>	<p style="text-align: right;">Page 289</p> <p>1 James H. Aronoff</p> <p>2 MR. DAVIS: Okay. I'm just going</p> <p>3 to say here before we conclude that after</p> <p>4 seven hours of testimony, I believe the</p> <p>5 witness has given an answer that's</p> <p>6 somewhat different than what he gave me</p> <p>7 prior. I believe that's another</p> <p>8 indication that we should have some</p> <p>9 additional time with him.</p> <p>10 MR. HEALY: Well, Mr. Davis, I</p> <p>11 don't think it's surprising that late on</p> <p>12 a Friday afternoon or early on a Friday</p> <p>13 evening, as it turns out, that we would</p> <p>14 disagree on that, as among other issues.</p> <p>15 So I think on that note, we should</p> <p>16 conclude.</p> <p>17 MR. DAVIS: We can agree to</p> <p>18 disagree. Have a good evening.</p> <p>19 MR. HEALY: You, too.</p> <p>20 VIDEO TECHNICIAN: The time is</p> <p>21 7:08 p.m. We're concluded and off the</p> <p>22 record.</p> <p>23</p> <p>24</p> <p>25</p>

EXHIBIT D

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Chapter 11
5 Case No. 08-13555 (SCC)

6 -----x

7
8 IN RE

9
10 LEHMAN BROTHERS HOLDINGS INC., et al.,

11 Debtors.

12 -----x

13 September 28, 2017

14 9:36 a.m.

15 Videotaped Deposition of EDMOND
16 ESSES, taken by Debtors, pursuant to
17 Notice, held at the offices of Willkie Farr
18 & Gallagher LLP, 787 Seventh Avenue, New
19 York, New York, before Todd DeSimone, a
20 Registered Professional Reporter and Notary
21 Public of the State of New York.
22
23
24
25

<p style="text-align: right;">Page 130</p> <p>1 E. ESSES</p> <p>2 vague, confusing and inaccurate.</p> <p>3 But you can answer that yes or</p> <p>4 no.</p> <p>5 A. I do know the answer to that,</p> <p>6 and the answer is no, they were not</p> <p>7 withdrawn.</p> <p>8 MR. HEALY: Mr. Esses, let me</p> <p>9 be clear about this. You are not to</p> <p>10 testify about any information you have</p> <p>11 about claims that may or may not be being</p> <p>12 pursued -- or may not be being pursued in</p> <p>13 the estimation hearing that was derived</p> <p>14 either through your communications with</p> <p>15 Mr. Aronoff or any other expert or counsel.</p> <p>16 THE WITNESS: Okay.</p> <p>17 Q. Do you know from a source other</p> <p>18 than counsel or Mr. Aronoff whether</p> <p>19 loans -- whether claims that were made</p> <p>20 against the Lehman estate in the course of</p> <p>21 the protocol are no longer the subject of</p> <p>22 this estimation proceeding?</p> <p>23 MR. HEALY: I'll object to the</p> <p>24 form of the question. Are you excluding</p> <p>25 whatever may have been said in other expert</p>	<p style="text-align: right;">Page 132</p> <p>1 E. ESSES</p> <p>2 Q. Do you know why? Just yes or</p> <p>3 no.</p> <p>4 MR. HEALY: I don't think you</p> <p>5 are entitled to inquire as to what his</p> <p>6 knowledge is on the subject.</p> <p>7 MR. ROLLIN: I'm not asking</p> <p>8 what his knowledge is. I just want to know</p> <p>9 if he knows why.</p> <p>10 MR. HEALY: We have an</p> <p>11 agreement that this does not constitute a</p> <p>12 waiver of any privilege or protection, his</p> <p>13 answering yes or no?</p> <p>14 MR. ROLLIN: Yeah, I don't</p> <p>15 believe that is intended to invade a</p> <p>16 privilege or protection.</p> <p>17 MR. HEALY: Okay. So we have</p> <p>18 such a stipulation, not be asserted to be a</p> <p>19 waiver of any privilege or protection?</p> <p>20 MR. ROLLIN: Yes, this answer,</p> <p>21 no, I won't assert that.</p> <p>22 MR. HEALY: All right, yes or</p> <p>23 no answer.</p> <p>24 A. Can you repeat the question,</p> <p>25 please?</p>
<p style="text-align: right;">Page 131</p> <p>1 E. ESSES</p> <p>2 reports?</p> <p>3 MR. ROLLIN: I am only trying</p> <p>4 to follow and be consistent with the</p> <p>5 instruction that you gave him.</p> <p>6 I just want to know if he knows</p> <p>7 from a non-privileged, non-confidential</p> <p>8 source whether claims that were made</p> <p>9 against the Lehman estate in the protocol</p> <p>10 are no longer the subject of this</p> <p>11 estimation proceeding.</p> <p>12 MR. HEALY: So I'm going to</p> <p>13 re-interpose my objection to form. I'm</p> <p>14 going to instruct the witness that he can</p> <p>15 answer that question yes or no.</p> <p>16 A. Yes.</p> <p>17 Q. How do you know that?</p> <p>18 A. I am generally aware of the</p> <p>19 claims that are subject to Mr. Aronoff's</p> <p>20 report.</p> <p>21 Q. And so you know that</p> <p>22 Mr. Aronoff's report includes fewer claims</p> <p>23 than those that were submitted against the</p> <p>24 Lehman estate in the protocol?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 E. ESSES</p> <p>2 Q. I would be happy to.</p> <p>3 Do you know why?</p> <p>4 A. Was that the end of the</p> <p>5 question?</p> <p>6 Q. Yes.</p> <p>7 A. Do I know why, what? I'm</p> <p>8 sorry, just please repeat the question.</p> <p>9 Q. Do you know why Mr. Aronoff's</p> <p>10 report includes fewer claims than those</p> <p>11 that were submitted against the Lehman</p> <p>12 estate in the protocol?</p> <p>13 A. I do not.</p> <p>14 Q. Do you have any information</p> <p>15 about who does?</p> <p>16 MR. HEALY: I think you've</p> <p>17 strayed too far. He is instructed not to</p> <p>18 answer that question.</p> <p>19 Q. You are going to follow that</p> <p>20 instruction?</p> <p>21 A. Yes.</p> <p>22 Q. In the quality control process</p> <p>23 performed at Duff & Phelps, did the QCers</p> <p>24 do anything to verify the underlying facts</p> <p>25 of any particular claim?</p>

<p style="text-align: right;">Page 134</p> <p>1 E. ESSES</p> <p>2 MR. HEALY: Objection to the</p> <p>3 form of the question, vague and ambiguous.</p> <p>4 A. They did, yes.</p> <p>5 Q. What did they do?</p> <p>6 A. To the extent necessary, they</p> <p>7 reviewed the packet of supporting evidence.</p> <p>8 Q. I mean reverify the facts that</p> <p>9 the review firms offered in support of the</p> <p>10 breach findings.</p> <p>11 MR. HEALY: Objection to the</p> <p>12 form of the question. I'm not sure what</p> <p>13 that means. Vague and ambiguous.</p> <p>14 A. I thought I answered that</p> <p>15 question.</p> <p>16 Q. Did they -- let's take, for an</p> <p>17 example, a review firm contacts -- runs a</p> <p>18 BLS report; do you know what I'm talking</p> <p>19 about?</p> <p>20 A. I do, yes.</p> <p>21 Q. Did the QC process rerun, just</p> <p>22 for purposes of this example, a BLS report?</p> <p>23 A. No, we didn't think that was</p> <p>24 necessary.</p> <p>25 Q. And now expanding it beyond</p>	<p style="text-align: right;">Page 136</p> <p>1 E. ESSES</p> <p>2 Q. So that's not something they</p> <p>3 did, right?</p> <p>4 A. It's possible they did that on</p> <p>5 occasion, but that was not part of the</p> <p>6 scope of that quality control level of</p> <p>7 review.</p> <p>8 Q. And it wasn't in the scope of</p> <p>9 the work above that quality control level</p> <p>10 of review at Duff & Phelps either, was it?</p> <p>11 A. To the extent Mr. Campbell and</p> <p>12 Mr. Aronoff felt it was necessary to</p> <p>13 confirm, but there was a process -- there</p> <p>14 was a -- there was a back and forth between</p> <p>15 the review firms, or if they had questions,</p> <p>16 Mr. Campbell discussed those questions with</p> <p>17 the review firms.</p> <p>18 Q. No, I understand that. I'm</p> <p>19 trying to understand whether once it got</p> <p>20 past those two levels of Duff & Phelps</p> <p>21 review, whether there was any process to</p> <p>22 reconfirm the facts.</p> <p>23 A. Well, the original facts were</p> <p>24 produced by a review firm, who these</p> <p>25 particular review firms had significant</p>
<p style="text-align: right;">Page 135</p> <p>1 E. ESSES</p> <p>2 just BLS, using that as an example of a</p> <p>3 reverification, did the QC process at Duff</p> <p>4 & Phelps perform any other factual</p> <p>5 reverifications?</p> <p>6 A. As I've described that level of</p> <p>7 review, they confirmed the facts and that</p> <p>8 the description -- the description</p> <p>9 accurately described -- described the facts</p> <p>10 of the breach, and, to the extent</p> <p>11 necessary, verified the support -- that the</p> <p>12 supporting documents supported that breach.</p> <p>13 Q. What do you mean by "confirmed</p> <p>14 the facts," when you say "they confirmed</p> <p>15 the facts"?</p> <p>16 A. So in the context of my prior</p> <p>17 answer, that the finding articulated a</p> <p>18 clear basis for the breach finding, and, to</p> <p>19 the extent necessary, reviewed the</p> <p>20 underlying supporting documentation.</p> <p>21 Q. But did not go to the outside</p> <p>22 source that the loan review firm may have</p> <p>23 gone to to double-check that work?</p> <p>24 A. That was not part of the scope</p> <p>25 of their review.</p>	<p style="text-align: right;">Page 137</p> <p>1 E. ESSES</p> <p>2 experience and understanding of the review</p> <p>3 firm. So no, we didn't deem that</p> <p>4 necessary.</p> <p>5 Q. Did anybody at Duff & Phelps do</p> <p>6 any recalculation of DTIs?</p> <p>7 A. It's possible. I'm not,</p> <p>8 sitting here, I'm not exactly sure.</p> <p>9 Q. But it wasn't something that</p> <p>10 was done in the ordinary course of Duff &</p> <p>11 Phelps' work in this case, correct?</p> <p>12 MR. HEALY: Objection to form.</p> <p>13 A. You know, it may, depending on</p> <p>14 the breach finding, it may have been</p> <p>15 warranted. I'm not, you know, I'm not</p> <p>16 specifically sure that -- there weren't</p> <p>17 instructions to recalculate it in every</p> <p>18 single instance.</p> <p>19 Q. When you say "they," you mean</p> <p>20 the QC reviewers at Duff & Phelps?</p> <p>21 A. QC 1 and QC 2.</p> <p>22 Q. And they weren't</p> <p>23 specifically -- you said there weren't</p> <p>24 instructions to recalculate it in every</p> <p>25 single instance. There weren't</p>

EXHIBIT E

** C O N F I D E N T I A L **

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Chapter 11

Case No. 08-13555 (SCC)

-----x

IN RE

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

-----x

November 17, 2017
9:37 a.m.

VOLUME III

Continued Videotaped Deposition of
JAMES H. ARONOFF, taken by Plan
Administrator, pursuant to Notice, held at
the offices of Willkie Farr & Gallagher
LLP, 787 Seventh Avenue, New York, New
York, before Todd DeSimone, a Registered
Professional Reporter and Notary Public of
the State of New York.

<p style="text-align: right;">Page 604</p> <p>1 ARONOFF</p> <p>2 A. I don't know what the trustees'</p> <p>3 view would be. I haven't thought about</p> <p>4 whether or not I think this borrower lied</p> <p>5 or not.</p> <p>6 MR. DAVIS: Okay, I appear to</p> <p>7 be out of time.</p> <p>8 MR. HEALY: I have a few</p> <p>9 questions, Mr. Aronoff. Do you need a</p> <p>10 break before we continue?</p> <p>11 MR. DAVIS: I do actually.</p> <p>12 MR. HEALY: Okay.</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 2:23. We are going off the record.</p> <p>15 (Recess taken.)</p> <p>16 THE VIDEOGRAPHER: The time is</p> <p>17 2:36. We are back on the record.</p> <p>18 EXAMINATION BY MR. HEALY:</p> <p>19 Q. Mr. Aronoff, I'm going to refer</p> <p>20 you to the last line of questioning by</p> <p>21 Mr. Davis before we finished.</p> <p>22 Do you have a view as to</p> <p>23 whether the facts that support the breach</p> <p>24 findings for misrepresentation claims that</p> <p>25 are the subject of your report in many</p>	<p style="text-align: right;">Page 605</p> <p>1 ARONOFF</p> <p>2 instances support the conclusion that the</p> <p>3 borrower was in fact intentionally making a</p> <p>4 misstatement?</p> <p>5 MR. DAVIS: Objection, leading.</p> <p>6 A. Yes.</p> <p>7 Q. What is your view?</p> <p>8 MR. DAVIS: Leading.</p> <p>9 A. That although a showing of</p> <p>10 intention is not required to support a</p> <p>11 misrepresentation breach finding, given the</p> <p>12 nature of the misstatements or the enormous</p> <p>13 difference between, in many cases, the</p> <p>14 statements that were made in order to</p> <p>15 secure the loan and the actual facts that</p> <p>16 were uncovered or identified in the</p> <p>17 forensic review, I believe that in the vast</p> <p>18 majority of cases the statements made by</p> <p>19 the borrowers were intentional.</p> <p>20 Q. Would you turn to Exhibit 67,</p> <p>21 that is PA Exhibit 67. Is that a copy of</p> <p>22 your affirmative expert report in this</p> <p>23 case?</p> <p>24 A. Yes.</p> <p>25 Q. Would you turn to page 43 of</p>
<p style="text-align: right;">Page 606</p> <p>1 ARONOFF</p> <p>2 that report. Now, on pages 43 and 44, do</p> <p>3 you describe certain criteria that apply to</p> <p>4 the misrepresentation of income breach</p> <p>5 findings that are the subject of your</p> <p>6 report?</p> <p>7 MR. DAVIS: Objection, vague.</p> <p>8 A. Yes.</p> <p>9 Q. Let's start on page 43. You</p> <p>10 see that it says that the review firms were</p> <p>11 instructed to use a 5 percent variance</p> <p>12 between the misstated income and verified</p> <p>13 income as a threshold for determining the</p> <p>14 significance of an income</p> <p>15 misrepresentation?</p> <p>16 A. I see that.</p> <p>17 Q. Was that a criteria that was</p> <p>18 used during the course of the loan review</p> <p>19 process conducted during the protocol</p> <p>20 process?</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. Do you have a view as to</p> <p>23 whether a misrepresentation of income that</p> <p>24 was less than 5 percent would still be a</p> <p>25 valid breach?</p>	<p style="text-align: right;">Page 607</p> <p>1 ARONOFF</p> <p>2 MR. DAVIS: Leading.</p> <p>3 A. Yes.</p> <p>4 Q. What's your view?</p> <p>5 A. It still is a valid breach</p> <p>6 claim because it would -- to the extent</p> <p>7 there was a misstatement of income that was</p> <p>8 material and adverse to the interests of</p> <p>9 investors, that would provide a claim.</p> <p>10 There is no variance in the rep or there is</p> <p>11 no variance in fact, in custom and</p> <p>12 practice.</p> <p>13 Q. To the extent that a</p> <p>14 misrepresentation of income breach finding</p> <p>15 was submitted during the protocol that had</p> <p>16 associated with it a less than 5 percent</p> <p>17 variance and that breach finding is not a</p> <p>18 subject of your report, does that indicate</p> <p>19 that there was some deficiency in the</p> <p>20 process, that was conducted during the</p> <p>21 protocol process?</p> <p>22 MR. DAVIS: Objection, leading,</p> <p>23 incomplete hypothetical.</p> <p>24 A. No, not in any way.</p> <p>25 Q. Would you go to page 44. Now,</p>

<p style="text-align: right;">Page 608</p> <p>1 ARONOFF</p> <p>2 in the first paragraph on page 44, you</p> <p>3 discuss the difference between same-year</p> <p>4 and near-year evidence. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And do you see that you</p> <p>7 describe certain criteria that apply to the</p> <p>8 loans within -- that are the subject of</p> <p>9 your report that are based upon near-year</p> <p>10 evidence, do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, towards the bottom of that</p> <p>13 paragraph it states "The breach findings</p> <p>14 supported by near-year evidence for</p> <p>15 salaried borrowers are based only on</p> <p>16 evidence showing variances of at least 30</p> <p>17 percent between the represented and</p> <p>18 verified income, if the loan was originated</p> <p>19 in 2007 and later."</p> <p>20 Do you see that?</p> <p>21 MR. DAVIS: I'm going to</p> <p>22 object. This is outside the scope of my</p> <p>23 examination, it is not proper cross, and it</p> <p>24 is leading.</p> <p>25 Q. You can answer the question,</p>	<p style="text-align: right;">Page 609</p> <p>1 ARONOFF</p> <p>2 Mr. Aronoff.</p> <p>3 A. I do see that.</p> <p>4 Q. Was that a criteria or a screen</p> <p>5 that was applied during the protocol</p> <p>6 process?</p> <p>7 MR. DAVIS: Same objections.</p> <p>8 A. No.</p> <p>9 Q. Do you have a view as to</p> <p>10 whether breach findings that did not</p> <p>11 satisfy that criteria that were put forth</p> <p>12 during the protocol process were valid</p> <p>13 breach findings?</p> <p>14 MR. DAVIS: Same objections.</p> <p>15 A. Yes, they were valid breach</p> <p>16 findings.</p> <p>17 Q. Does the fact that that</p> <p>18 category of breach findings is not included</p> <p>19 in the loans that are the subject of your</p> <p>20 report cause you any concerns about the</p> <p>21 reliability of the loan review process that</p> <p>22 was conducted during the protocol process</p> <p>23 on behalf of the trustees?</p> <p>24 MR. DAVIS: Counsel, at this</p> <p>25 point I'm going to object. This line of</p>
<p style="text-align: right;">Page 610</p> <p>1 ARONOFF</p> <p>2 examination is improper, it is outside the</p> <p>3 scope of my examination, and if you are</p> <p>4 going where I think you are going, it is</p> <p>5 too late to introduce evidence in this case</p> <p>6 on a subject that the trustees have taken</p> <p>7 the position is protected as privileged.</p> <p>8 If you keep down this road, you</p> <p>9 proceed at your own peril and in the Plan</p> <p>10 Administrator's view you will be waiving</p> <p>11 attorney-client privileges and work product</p> <p>12 protections on this subject.</p> <p>13 Q. To be clear, Mr. Aronoff, I'm</p> <p>14 not asking you for any information that you</p> <p>15 have that you received from counsel or that</p> <p>16 was derived from communications with</p> <p>17 counsel. Do you understand that</p> <p>18 instruction?</p> <p>19 MR. DAVIS: And to be clear,</p> <p>20 Mr. Healy, that does not cure the issue, in</p> <p>21 our view. Proceed if you wish.</p> <p>22 Q. Mr. Aronoff, do you understand</p> <p>23 the instruction?</p> <p>24 THE WITNESS: Can I hear the</p> <p>25 instruction again, please?</p>	<p style="text-align: right;">Page 611</p> <p>1 ARONOFF</p> <p>2 (The record was read.)</p> <p>3 MR. DAVIS: Same objections.</p> <p>4 Outside the scope of my examination.</p> <p>5 MR. HEALY: Can you now reread</p> <p>6 the question that I asked Mr. Aronoff to</p> <p>7 which Mr. Davis objected.</p> <p>8 (The record was read.)</p> <p>9 MR. DAVIS: And vague.</p> <p>10 A. No.</p> <p>11 Q. Now, the next paragraph on page</p> <p>12 44 talks about the use of near-year</p> <p>13 evidence for misrepresentation of income</p> <p>14 claims asserted with respect to</p> <p>15 self-employed borrowers. Do you see that?</p> <p>16 MR. DAVIS: Leading. Same</p> <p>17 objections.</p> <p>18 A. Yes.</p> <p>19 Q. And in the second sentence it</p> <p>20 says that "The breach findings supported by</p> <p>21 near-year evidence for self-employed</p> <p>22 borrowers are based only on evidence</p> <p>23 showing variances of at least 100 percent</p> <p>24 between the misstated and verified income</p> <p>25 if the evidence was at least two years from</p>

<p style="text-align: right;">Page 612</p> <p>1 ARONOFF</p> <p>2 origination and at least 50 percent for</p> <p>3 loans originated in 2007 and later."</p> <p>4 Do you see that?</p> <p>5 MR. DAVIS: Same objection.</p> <p>6 A. I do.</p> <p>7 Q. Were the criteria that are set</p> <p>8 forth in that sentence applied during the</p> <p>9 course of the protocol process?</p> <p>10 MR. DAVIS: Same objections.</p> <p>11 A. No.</p> <p>12 Q. Does the fact that breach</p> <p>13 findings that did not satisfy those</p> <p>14 criteria are not included in the scope of</p> <p>15 your report suggest to you that there was</p> <p>16 some deficiency or unreliability in the</p> <p>17 loan review process conducted during the</p> <p>18 protocol on behalf of the trustees?</p> <p>19 MR. DAVIS: Same objections,</p> <p>20 leading, outside the scope.</p> <p>21 A. No, it does not.</p> <p>22 Q. With respect to the last two</p> <p>23 answers that you have given me with respect</p> <p>24 to these two criteria and the prior</p> <p>25 criteria with respect to salaried</p>	<p style="text-align: right;">Page 613</p> <p>1 ARONOFF</p> <p>2 borrowers, can you explain why you don't</p> <p>3 think the omission of those categories from</p> <p>4 the scope of your report creates any</p> <p>5 uncertainty about the reliability of the</p> <p>6 process?</p> <p>7 MR. DAVIS: Compound, leading,</p> <p>8 outside the scope of my examination,</p> <p>9 improper cross, or direct.</p> <p>10 THE WITNESS: Can I hear the</p> <p>11 question, please.</p> <p>12 (The record was read.)</p> <p>13 MR. DAVIS: Also lacks</p> <p>14 foundation.</p> <p>15 MR. HEALY: I'm going to break</p> <p>16 it down actually.</p> <p>17 Q. Let's go to page 44 and look at</p> <p>18 the last sentence in the first paragraph of</p> <p>19 page 44. Are you with me?</p> <p>20 A. The last sentence in the first</p> <p>21 paragraph, yes.</p> <p>22 Q. Can you explain why you do not</p> <p>23 think that the omission of breach findings</p> <p>24 that do not satisfy that criteria does not</p> <p>25 render -- raise any concern about the</p>
<p style="text-align: right;">Page 614</p> <p>1 ARONOFF</p> <p>2 reliability of the loan review process</p> <p>3 conducted during the protocol process on</p> <p>4 behalf of the trustees?</p> <p>5 MR. DAVIS: Objection, vague,</p> <p>6 leading, outside the scope of my opinion,</p> <p>7 and this appears to be counsel's attempt to</p> <p>8 elicit new opinions three days before the</p> <p>9 beginning of trial from this witness,</p> <p>10 entirely inappropriate.</p> <p>11 Q. You can answer the question,</p> <p>12 Mr. Aronoff.</p> <p>13 A. The reason is that, as I stated</p> <p>14 previously, the way in which the breach</p> <p>15 findings were ascertained under the</p> <p>16 protocol with a 5 percent variance was</p> <p>17 appropriate, thoughtful, reasonable and</p> <p>18 well within industry custom and practice.</p> <p>19 So to the extent a more stringent or</p> <p>20 conservative subset of that universe, using</p> <p>21 a 30 percent in certain instances,</p> <p>22 certainly would not in any way affect my</p> <p>23 view that what was submitted under the</p> <p>24 protocol was valid and reasonable.</p> <p>25 Q. Let me ask you to look at the</p>	<p style="text-align: right;">Page 615</p> <p>1 ARONOFF</p> <p>2 second to last sentence in the final</p> <p>3 paragraph on page 44.</p> <p>4 A. Okay.</p> <p>5 Q. Can you explain why the</p> <p>6 omission of loans that do not satisfy</p> <p>7 either one of those criteria from the loans</p> <p>8 that are the subject of your report does</p> <p>9 not cause you any concern about the</p> <p>10 reliability of the loan review process</p> <p>11 conducted during the protocol on behalf of</p> <p>12 the trustees?</p> <p>13 MR. DAVIS: Same objections,</p> <p>14 vague, leading, outside the scope of my</p> <p>15 direct -- or my cross, sorry.</p> <p>16 A. The same answer. This is a --</p> <p>17 this is a subset of the claims that were</p> <p>18 made under the protocol, which I believe</p> <p>19 were reasonable and valid, and so to the</p> <p>20 extent this is simply more conservative</p> <p>21 standards as to which -- as to which claims</p> <p>22 will be pursued doesn't affect the --</p> <p>23 doesn't affect that in any way.</p> <p>24 Q. Could I ask you to turn to</p> <p>25 Exhibit 68, please. Would you look at</p>

<p style="text-align: right;">Page 616</p> <p>1 ARONOFF</p> <p>2 paragraph 38, please. I'm sorry, is this a</p> <p>3 copy of your rebuttal report?</p> <p>4 A. Yes.</p> <p>5 Q. Would you look at paragraph 38,</p> <p>6 please. Just take a moment and look at</p> <p>7 that.</p> <p>8 (Witness perusing document.)</p> <p>9 A. Okay.</p> <p>10 Q. Now, this paragraph discusses</p> <p>11 the use of BLS; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And do you see that it says</p> <p>14 that BLS was used to provide information</p> <p>15 regarding income for employed wage earners,</p> <p>16 do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Are there instances where it</p> <p>19 may be appropriate to use BLS for wage</p> <p>20 earners -- strike that.</p> <p>21 Are there instances where it</p> <p>22 may be appropriate to use BLS to evaluate</p> <p>23 the income for wage earners who are</p> <p>24 formerly self-employed but have the</p> <p>25 characteristics of salaried borrowers?</p>	<p style="text-align: right;">Page 617</p> <p>1 ARONOFF</p> <p>2 MR. DAVIS: Leading.</p> <p>3 A. Yes.</p> <p>4 Q. Can you explain that?</p> <p>5 MR. DAVIS: Same objection.</p> <p>6 A. For purposes of the protocol,</p> <p>7 there were some instances, although not</p> <p>8 many, where the nature of the income -- the</p> <p>9 nature of the job performed by the</p> <p>10 borrower, despite the fact that they were</p> <p>11 technically self-employed as an independent</p> <p>12 contractor, for example, would allow the</p> <p>13 use of BLS as an appropriate reference</p> <p>14 point for their income, primarily because</p> <p>15 they would be performing a function and</p> <p>16 engaged in a job that was almost identical</p> <p>17 to a job a wage earner would have been</p> <p>18 involved in.</p> <p>19 And an example that comes to</p> <p>20 mind, a couple of examples that come to</p> <p>21 mind are a barber who generally gets paid</p> <p>22 the same amount whether they happen to be a</p> <p>23 W-2 employee of a barbershop or whether</p> <p>24 they are an independent contractor who</p> <p>25 rents a chair in a barbershop, or a limo</p>
<p style="text-align: right;">Page 618</p> <p>1 ARONOFF</p> <p>2 driver who may work for a limo company as a</p> <p>3 W-2 employee or who may be a 1099 employee</p> <p>4 of that same company.</p> <p>5 Q. If breach findings using BLS</p> <p>6 relating to self-employed borrowers of the</p> <p>7 type that you described were omitted from</p> <p>8 your loans, that is the loans that are the</p> <p>9 subject of your report, does that cause you</p> <p>10 to have concerns about the reliability of</p> <p>11 the loan review process that was used</p> <p>12 during the protocol on behalf of the</p> <p>13 trustees?</p> <p>14 A. Not at all.</p> <p>15 MR. DAVIS: Same objections,</p> <p>16 vague, leading, outside the scope of my</p> <p>17 examination.</p> <p>18 Q. Can you tell us why you hold</p> <p>19 that view?</p> <p>20 MR. DAVIS: Same objections.</p> <p>21 A. Because the use of BLS in the</p> <p>22 fashion I described for those particular</p> <p>23 types of jobs is perfectly consistent with</p> <p>24 industry custom and practice in terms of a</p> <p>25 valid -- valid support for a breach of rep</p>	<p style="text-align: right;">Page 619</p> <p>1 ARONOFF</p> <p>2 and warranty, and so the fact that those</p> <p>3 loans weren't -- don't happen to be the</p> <p>4 subject of my report, if that's what your</p> <p>5 question is saying, doesn't in any way</p> <p>6 speak to the validity of those claims made</p> <p>7 under the protocol.</p> <p>8 Q. Does the effect of the criteria</p> <p>9 that we've discussed that apply to the</p> <p>10 loans that are the subject of your report</p> <p>11 and that are described in your report serve</p> <p>12 to render the breach findings that you do</p> <p>13 address more conservative?</p> <p>14 MR. DAVIS: Same objections,</p> <p>15 vague, leading, outside the scope.</p> <p>16 A. I believe they do, yes.</p> <p>17 Q. But they don't undermine the</p> <p>18 reliability of the process that was used to</p> <p>19 identify breach findings that may have been</p> <p>20 omitted from your report?</p> <p>21 MR. DAVIS: Same objections,</p> <p>22 outside the scope of my examination,</p> <p>23 leading, vague.</p> <p>24 Q. Is that correct?</p> <p>25 MR. DAVIS: Same objections.</p>

<p style="text-align: right;">Page 620</p> <p>1 ARONOFF</p> <p>2 A. That's correct.</p> <p>3 Q. Do you understand that</p> <p>4 arguments have been advanced that the</p> <p>5 omission of breach claims from the scope of</p> <p>6 your report undermines the reliability of</p> <p>7 the process?</p> <p>8 MR. DAVIS: Mr. Healy, all of</p> <p>9 this is outside the scope of my</p> <p>10 examination, so on what basis do you think</p> <p>11 you can examine this witness on these</p> <p>12 subjects?</p> <p>13 MR. HEALY: I believe that this</p> <p>14 is appropriate cross-examination and</p> <p>15 redirect based upon your examination during</p> <p>16 the course of your deposition of</p> <p>17 Mr. Aronoff. I'm sure if you don't think</p> <p>18 so you will make an appropriate objection</p> <p>19 to the extent that we ever have occasion to</p> <p>20 try to introduce this into evidence.</p> <p>21 MR. DAVIS: How long do you</p> <p>22 intend to continue this line of</p> <p>23 examination?</p> <p>24 MR. HEALY: Just a few more</p> <p>25 minutes.</p>	<p style="text-align: right;">Page 621</p> <p>1 ARONOFF</p> <p>2 MR. DAVIS: Because otherwise I</p> <p>3 would like to get the judge on the phone</p> <p>4 and have her rule on this.</p> <p>5 MR. HEALY: We will be done in</p> <p>6 a few minutes.</p> <p>7 THE WITNESS: Can I hear the</p> <p>8 question again, please.</p> <p>9 (The record was read.)</p> <p>10 MR. DAVIS: Same objections.</p> <p>11 A. Yes, Mr. Grice asserts that.</p> <p>12 Q. Do you know how many breach</p> <p>13 findings -- strike that -- loans have been</p> <p>14 identified as breaching loans at the end of</p> <p>15 the protocol process?</p> <p>16 MR. DAVIS: Same objections.</p> <p>17 A. Approximately 92,000.</p> <p>18 Q. Does 94,000 sound as if that is</p> <p>19 the correct number?</p> <p>20 MR. DAVIS: Leading, same</p> <p>21 objections.</p> <p>22 A. I think 94,000 loans is the</p> <p>23 number of loans that was actually submitted</p> <p>24 during the protocol process.</p> <p>25 Q. And do you recall how many of</p>
<p style="text-align: right;">Page 622</p> <p>1 ARONOFF</p> <p>2 those remained at the end of the protocol</p> <p>3 process?</p> <p>4 MR. DAVIS: Same objections.</p> <p>5 A. About 92,000.</p> <p>6 Q. Do you have any understanding</p> <p>7 as to why the number was reduced?</p> <p>8 MR. DAVIS: Same objections.</p> <p>9 A. I think based on a status</p> <p>10 report I reviewed, the difference would</p> <p>11 have been loans that were submitted that</p> <p>12 had paid off or were the subject of trusts</p> <p>13 that terminated, or loans that were</p> <p>14 withdrawn.</p> <p>15 Q. Does the fact that loans may</p> <p>16 have been -- claims may have been withdrawn</p> <p>17 during the course of the protocol process</p> <p>18 cause you any concerns about the</p> <p>19 reliability of the process?</p> <p>20 MR. DAVIS: Same objections.</p> <p>21 A. No.</p> <p>22 Q. Does the fact that categories</p> <p>23 of breach claims are omitted from your</p> <p>24 report, that is -- strike that.</p> <p>25 Does the fact that categories</p>	<p style="text-align: right;">Page 623</p> <p>1 ARONOFF</p> <p>2 of breach claims that were asserted during</p> <p>3 the protocol were omitted from your report</p> <p>4 suggest to you that there were systemic</p> <p>5 problems with the loan review process?</p> <p>6 MR. DAVIS: Same objections.</p> <p>7 A. No.</p> <p>8 Q. Can you explain that?</p> <p>9 MR. DAVIS: Same objections.</p> <p>10 A. I was -- I have opined that the</p> <p>11 protocol process was appropriate and</p> <p>12 reasonable to produce the results that it</p> <p>13 produced and I reviewed the breach claims</p> <p>14 that were the subject of my report and I</p> <p>15 don't see what a difference in the number</p> <p>16 of breach claims under my report that</p> <p>17 happened to go through the protocol process</p> <p>18 have anything to say about the validity of</p> <p>19 loans that were submitted under the</p> <p>20 protocol.</p> <p>21 Q. Do you have any other bases for</p> <p>22 your view?</p> <p>23 MR. DAVIS: Same objection,</p> <p>24 vague.</p> <p>25 A. No bases for my view in this</p>

<p style="text-align: right;">Page 624</p> <p>1 ARONOFF</p> <p>2 case. However, I will note that in my</p> <p>3 experience it is fairly common and not</p> <p>4 unusual at all for the number of valid</p> <p>5 claims that come out of a forensic loan</p> <p>6 review to be a larger universe of loans</p> <p>7 than are ultimately the subject matter of</p> <p>8 the related action. So the fact that that</p> <p>9 happened here causes me no pause at all.</p> <p>10 Q. Does the fact that some of the</p> <p>11 categories of breach findings that you do</p> <p>12 address in your report not -- strike that.</p> <p>13 Does the fact that not all of</p> <p>14 the loans or claims that were identified</p> <p>15 during the protocol process are included</p> <p>16 within the categories of breach findings</p> <p>17 that you do address create any concern on</p> <p>18 your part about the reliability of the loan</p> <p>19 review process?</p> <p>20 MR. DAVIS: Objection, outside</p> <p>21 the scope, leading, and vague.</p> <p>22 A. No.</p> <p>23 Q. Do you have an understanding</p> <p>24 that the -- strike that.</p> <p>25 Let's turn back to the</p>	<p style="text-align: right;">Page 625</p> <p>1 ARONOFF</p> <p>2 misrepresentation breach claims that we</p> <p>3 talked about a few minutes ago. I know</p> <p>4 that you told me in your testimony that</p> <p>5 there were various reasons why those --</p> <p>6 certain claims within those categories may</p> <p>7 have been dropped, but let me -- let me ask</p> <p>8 you to assume that all of the breach</p> <p>9 findings for misrepresentation of income</p> <p>10 that are not being pursued in this</p> <p>11 proceeding were dropped because they were</p> <p>12 the result of errors, and let me further</p> <p>13 ask you to assume that out of a total of</p> <p>14 some 37,000 breach claims that were put</p> <p>15 forward in the protocol, approximately</p> <p>16 2,895 were not being pursued at the</p> <p>17 estimation hearing.</p> <p>18 A. How many?</p> <p>19 Q. 2,895 out of 37,313. And let</p> <p>20 me ask you to assume that that represents</p> <p>21 about a 7.8 percent.</p> <p>22 Does that fact cause you to</p> <p>23 conclude that there was a systemic</p> <p>24 deficiency in the loan review process that</p> <p>25 was conducted on behalf of the trustees</p>
<p style="text-align: right;">Page 626</p> <p>1 ARONOFF</p> <p>2 during the protocol?</p> <p>3 MR. DAVIS: Objection.</p> <p>4 A. No.</p> <p>5 MR. DAVIS: Hold on. You are</p> <p>6 leading this witness obviously by the nose.</p> <p>7 You are asking him about topics that I did</p> <p>8 not cover over the last two days of</p> <p>9 deposition, and, as I said before, you are</p> <p>10 proceeding at your own peril.</p> <p>11 Q. Can you explain the reason for</p> <p>12 your response?</p> <p>13 MR. DAVIS: Same objections.</p> <p>14 A. Even assuming that there was an</p> <p>15 error rate of 7 percent with respect to a</p> <p>16 particular category of breach finding,</p> <p>17 which I don't think there was, that's not</p> <p>18 to say there might not have been errors,</p> <p>19 the fact that there is an error on an</p> <p>20 individual loan or a small group of loans,</p> <p>21 given that the analysis was done on a</p> <p>22 loan-by-loan basis based on specific</p> <p>23 information as it related to each specific</p> <p>24 loan that was the subject of the review,</p> <p>25 there's no correlation or relationship</p>	<p style="text-align: right;">Page 627</p> <p>1 ARONOFF</p> <p>2 between an error in one loan and a</p> <p>3 potential error in the loans for which</p> <p>4 there is no error, particularly if the</p> <p>5 opportunity exists to review the 93 percent</p> <p>6 that in your hypothetical don't contain</p> <p>7 errors.</p> <p>8 Q. Did the Plan Administrator have</p> <p>9 the opportunity to review the 93 percent of</p> <p>10 misrepresentation of income loans that I've</p> <p>11 asked about in my hypothetical?</p> <p>12 MR. DAVIS: Same objections.</p> <p>13 Q. Let me ask it another way.</p> <p>14 Did the Plan Administrator have</p> <p>15 the opportunity to review and respond to</p> <p>16 each of the breach claim submissions made</p> <p>17 by the trustees during the course of the</p> <p>18 protocol?</p> <p>19 MR. DAVIS: Same objections.</p> <p>20 A. That was my understanding.</p> <p>21 Q. And in your reports have you</p> <p>22 described the nature of the Plan</p> <p>23 Administrator's responses submitted during</p> <p>24 the protocol process?</p> <p>25 MR. DAVIS: Same objections.</p>

<p style="text-align: right;">Page 628</p> <p>1 ARONOFF</p> <p>2 A. Yes.</p> <p>3 Q. And is it your view that for</p> <p>4 the vast majority of instances the Plan</p> <p>5 Administrator offered no particularized</p> <p>6 objection --</p> <p>7 MR. DAVIS: Same objections.</p> <p>8 Q. -- to the breach claims</p> <p>9 submitted by the trustees?</p> <p>10 MR. DAVIS: Same objections.</p> <p>11 THE WITNESS: Can I hear the</p> <p>12 question again, please.</p> <p>13 (The record was read.)</p> <p>14 A. Yes.</p> <p>15 Q. And I just talked to you about</p> <p>16 misrepresentation of income.</p> <p>17 Let me talk to you about</p> <p>18 misrepresentation of occupancy. Let me ask</p> <p>19 you to assume that of the claims submitted</p> <p>20 with a misrepresentation of occupancy</p> <p>21 breach finding during the protocol,</p> <p>22 approximately 1.3 percent of those are not</p> <p>23 the subject of your report.</p> <p>24 MR. DAVIS: Same objections.</p> <p>25 Q. And let me ask you to assume</p>	<p style="text-align: right;">Page 629</p> <p>1 ARONOFF</p> <p>2 that the 1.3 percent were all withdrawn on</p> <p>3 the basis that there was some error in the</p> <p>4 breach finding that was submitted during</p> <p>5 the protocol process.</p> <p>6 MR. DAVIS: Same objections.</p> <p>7 Q. Does that give you any concern</p> <p>8 that there are some systemic deficiencies</p> <p>9 in the loan review process that was</p> <p>10 conducted during the protocol on behalf of</p> <p>11 the trustees?</p> <p>12 MR. DAVIS: Same objections.</p> <p>13 A. No. I mean, that means 99</p> <p>14 percent of the claims were correct.</p> <p>15 Q. Let me ask you about</p> <p>16 misrepresentation of debt obligations, and</p> <p>17 let me ask you to assume that 3.7 percent</p> <p>18 of the misrepresentation of debt obligation</p> <p>19 breach findings submitted during the</p> <p>20 protocol process are not the subject of</p> <p>21 your report.</p> <p>22 MR. DAVIS: Same continuing</p> <p>23 objections.</p> <p>24 Q. Let me further ask you to</p> <p>25 assume that all of the breach findings</p>
<p style="text-align: right;">Page 630</p> <p>1 ARONOFF</p> <p>2 represented in that 3.7 percent had some</p> <p>3 error associated with the breach finding.</p> <p>4 Do you have a view as to</p> <p>5 whether that fact indicates a systemic</p> <p>6 deficiency in the loan review process that</p> <p>7 was conducted on behalf of the trustees</p> <p>8 during the protocol?</p> <p>9 MR. DAVIS: Same objections,</p> <p>10 and I would add, Mr. Healy, that the judge</p> <p>11 just told you yesterday that it was too</p> <p>12 late to put in additional expert opinions,</p> <p>13 and effectively what you are doing is</p> <p>14 eliciting an improper sur-reply.</p> <p>15 Q. Could you answer my question,</p> <p>16 please?</p> <p>17 THE WITNESS: I need to hear</p> <p>18 the question again, please.</p> <p>19 (The record was read.)</p> <p>20 A. I don't think those -- the</p> <p>21 facts in your hypothetical that you asked</p> <p>22 me to assume reflect a deficiency in the</p> <p>23 process for the same reasons I stated with</p> <p>24 respect to the misrepresentation of income</p> <p>25 hypothetical.</p>	<p style="text-align: right;">Page 631</p> <p>1 ARONOFF</p> <p>2 Q. And let me ask you, finally,</p> <p>3 about excessive DTI breach findings. Let</p> <p>4 me ask you to assume that approximately 6</p> <p>5 percent of the excessive DTI breach</p> <p>6 findings that were submitted during the</p> <p>7 protocol process are not included in the</p> <p>8 excessive DTI breach findings that are the</p> <p>9 subject of your report.</p> <p>10 MR. DAVIS: Same objections.</p> <p>11 Mr. Healy, may I ask you, are you reading</p> <p>12 from one of our expert reports?</p> <p>13 MR. HEALY: I am not reading</p> <p>14 from the body of one of your expert</p> <p>15 reports.</p> <p>16 MR. DAVIS: Are you referring</p> <p>17 to one of our expert reports as you ask</p> <p>18 these questions?</p> <p>19 MR. HEALY: I'm asking the</p> <p>20 witness hypotheticals.</p> <p>21 MR. DAVIS: You are not going</p> <p>22 to answer my question whether you are</p> <p>23 referring to one of our expert reports?</p> <p>24 MR. HEALY: I don't think I</p> <p>25 have an obligation to respond to that. I'm</p>

<p style="text-align: right;">Page 632</p> <p>1 ARONOFF</p> <p>2 asking the witness a hypothetical.</p> <p>3 MR. DAVIS: That is fine. The</p> <p>4 judge can ask you that question. Same</p> <p>5 objections.</p> <p>6 THE WITNESS: I need to hear</p> <p>7 the question again, I'm sorry.</p> <p>8 Q. Let me start again.</p> <p>9 So we are talking about</p> <p>10 excessive DTI breach findings. Are you</p> <p>11 with me?</p> <p>12 A. Yes.</p> <p>13 Q. So let me ask you to assume</p> <p>14 that 6 percent of the excessive DTI breach</p> <p>15 findings identified during the protocol</p> <p>16 process are not the subject of your expert</p> <p>17 opinion, and let me ask you to assume for</p> <p>18 purposes of this question that all of the</p> <p>19 breach findings represented by that 6</p> <p>20 percent contain some error with respect to</p> <p>21 the breach finding.</p> <p>22 Does that fact cause you to</p> <p>23 believe that the loan review process</p> <p>24 conducted during the protocol on behalf of</p> <p>25 the trustees suffered from some systemic</p>	<p style="text-align: right;">Page 633</p> <p>1 ARONOFF</p> <p>2 deficiency?</p> <p>3 MR. DAVIS: Same objections,</p> <p>4 and vague.</p> <p>5 A. No, for the same reasons as</p> <p>6 I've stated with respect to the prior</p> <p>7 hypotheticals.</p> <p>8 MR. HEALY: I pass the witness.</p> <p>9 MR. DAVIS: I need to take a</p> <p>10 break.</p> <p>11 THE VIDEOGRAPHER: The time is</p> <p>12 3:13. We are going off the record.</p> <p>13 (Recess taken.)</p> <p>14 THE VIDEOGRAPHER: The time is</p> <p>15 3:36. We are back on the record. This</p> <p>16 will be the start of media unit number</p> <p>17 four.</p> <p>18 EXAMINATION BY MR. DAVIS:</p> <p>19 Q. Mr. Aronoff, when did you first</p> <p>20 form the opinions you just offered in</p> <p>21 response to Mr. Healy's questions?</p> <p>22 A. The answers that I gave to the</p> <p>23 questions were based on understandings and</p> <p>24 beliefs that I have had probably since I</p> <p>25 offered my affirmative report. But the</p>
<p style="text-align: right;">Page 634</p> <p>1 ARONOFF</p> <p>2 ones with respect to Mr. Grice's comments</p> <p>3 about the impact of a mistake on any</p> <p>4 individual loan may have on the process or</p> <p>5 the loans that were the subject of my</p> <p>6 report we discussed yesterday and is</p> <p>7 discussed in my reply report.</p> <p>8 Q. Why didn't you provide all of</p> <p>9 the opinions you just offered in response</p> <p>10 to Mr. Healy's questions in your reply</p> <p>11 report?</p> <p>12 MR. HEALY: Objection, overly</p> <p>13 broad, vague and ambiguous, argumentative,</p> <p>14 assumes facts.</p> <p>15 A. I provided the same opinions in</p> <p>16 my reply report as I just offered now in</p> <p>17 different contexts. The specific context</p> <p>18 and specific hypotheticals that I addressed</p> <p>19 just now I was not asked to opine on in my</p> <p>20 reports.</p> <p>21 Q. Okay. So you are telling me</p> <p>22 that you provided the opinions you just</p> <p>23 gave in response to Mr. Healy's questions</p> <p>24 in your reply report; is that right?</p> <p>25 MR. HEALY: Objection to form,</p>	<p style="text-align: right;">Page 635</p> <p>1 ARONOFF</p> <p>2 misstates his testimony.</p> <p>3 A. That's not what I said.</p> <p>4 Q. Okay. So that's not correct?</p> <p>5 A. That's not correct.</p> <p>6 Q. Okay. Why didn't you provide</p> <p>7 those opinions that you just gave in</p> <p>8 response to Mr. Healy's questions in your</p> <p>9 reply report?</p> <p>10 MR. HEALY: Objection, assumes</p> <p>11 that Mr. Grice had submitted his reply</p> <p>12 report before Mr. Aronoff submitted his</p> <p>13 reply report.</p> <p>14 MR. DAVIS: That's an improper</p> <p>15 speaking objection.</p> <p>16 MR. HEALY: It is a totally</p> <p>17 confusing and misleading question.</p> <p>18 THE WITNESS: Could I hear the</p> <p>19 question that is standing, please.</p> <p>20 (The record was read.)</p> <p>21 A. Because I didn't just give any</p> <p>22 opinions. I answered questions that were</p> <p>23 asked of me.</p> <p>24 Q. So you didn't give any opinions</p> <p>25 in response to Mr. Healy's questions just</p>

<p style="text-align: right;">Page 636</p> <p>1 ARONOFF</p> <p>2 now?</p> <p>3 A. That's correct. I provided</p> <p>4 answers to questions regarding</p> <p>5 hypotheticals. I was asked my impressions.</p> <p>6 I was asked to elaborate on answers I gave.</p> <p>7 I didn't offer any new opinions in the</p> <p>8 questions that I was just asked. I</p> <p>9 answered questions I was asked. If you</p> <p>10 want to characterize everything I say as an</p> <p>11 opinion, then I guess little low opinion,</p> <p>12 we agree to disagree.</p> <p>13 THE WITNESS: Are we still on</p> <p>14 the record?</p> <p>15 MR. DAVIS: Yes. We will be</p> <p>16 right back.</p> <p>17 MR. HEALY: Objection. You are</p> <p>18 leaving the room. We're on the record.</p> <p>19 MS. SEABURY: Please keep the</p> <p>20 tape running. Please note for the</p> <p>21 record --</p> <p>22 MR. HEALY: So let us note for</p> <p>23 the record that Mr. Davis, together with</p> <p>24 his colleagues on the other side of the</p> <p>25 table, have exited the room and declined to</p>	<p style="text-align: right;">Page 637</p> <p>1 ARONOFF</p> <p>2 go off the record while doing so.</p> <p>3 (Pause.)</p> <p>4 BY MR. DAVIS:</p> <p>5 Q. Mr. Aronoff, are you saying</p> <p>6 that the loans that remain in the case are</p> <p>7 a more conservative set than the loans that</p> <p>8 were submitted to the protocol, is that the</p> <p>9 opinion I heard you provide a few moments</p> <p>10 ago?</p> <p>11 A. Again, I didn't offer an</p> <p>12 opinion in response to any questions that</p> <p>13 were asked, and, second, no, that's not</p> <p>14 what I'm saying. That's not how I answered</p> <p>15 the question.</p> <p>16 MR. DAVIS: Okay, no further</p> <p>17 questions.</p> <p>18 EXAMINATION BY MR. HEALY:</p> <p>19 Q. Mr. Aronoff, are the criteria</p> <p>20 that apply to the loans that you looked at</p> <p>21 that we discussed during my cross of you</p> <p>22 this afternoon reflected in your earlier</p> <p>23 reports?</p> <p>24 MR. DAVIS: Objection, leading.</p> <p>25 Same objections as before.</p>
<p style="text-align: right;">Page 638</p> <p>1 ARONOFF</p> <p>2 A. Yes.</p> <p>3 Q. Did you identify any new</p> <p>4 screens or criteria that apply to the loans</p> <p>5 that were the subject of your report in</p> <p>6 your testimony today?</p> <p>7 MR. DAVIS: Same objections,</p> <p>8 and it's outside the scope of my recross.</p> <p>9 A. No.</p> <p>10 Q. I wanted to clarify one</p> <p>11 question that I asked you before. I asked</p> <p>12 you a hypothetical about misrepresentation</p> <p>13 of occupancy and I had intended to ask you</p> <p>14 whether the fact that -- strike that.</p> <p>15 I had intended to ask you to</p> <p>16 assume that 1.3 percent of the breach</p> <p>17 findings in the misrepresentation of</p> <p>18 occupancy category that had been asserted</p> <p>19 during the protocol had been withdrawn and</p> <p>20 to further assume that all of those</p> <p>21 withdrawn breach findings had errors</p> <p>22 associated with them. Is that how you</p> <p>23 understood my hypothetical?</p> <p>24 MR. DAVIS: Wow, let's see,</p> <p>25 this is outside the scope of my recross, it</p>	<p style="text-align: right;">Page 639</p> <p>1 ARONOFF</p> <p>2 is outside the scope of my cross, so I</p> <p>3 guess it is doubly outside the scope. You</p> <p>4 passed the witness and now you are going</p> <p>5 back to your examination. That is totally</p> <p>6 improper. And I will lodge the same</p> <p>7 objections to this line of questioning as</p> <p>8 to the prior.</p> <p>9 Q. Can you answer my question,</p> <p>10 please?</p> <p>11 A. I understood -- I understand</p> <p>12 the question as you phrased it now, and</p> <p>13 that was how I understood the question to</p> <p>14 have been posed previously.</p> <p>15 Q. And that's how you answered the</p> <p>16 question?</p> <p>17 MR. DAVIS: Same objections.</p> <p>18 A. I answered it consistently with</p> <p>19 that understanding.</p> <p>20 MR. HEALY: I have nothing</p> <p>21 further.</p> <p>22 MR. DAVIS: No further</p> <p>23 questions.</p> <p>24 THE VIDEOGRAPHER: This</p> <p>25 concludes today's testimony given by James</p>

ARONOFF
Aronoff. The total number of media units
used was four. They will be retained by
Veritext Legal Solutions. And we are off
the record at 3:48.

[TIME NOTED: 3:48 p.m.]

JAMES H. ARONOFF

Subscribed and sworn to
before me this _____,
day of _____, 2017.

Notary Public

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CERTIFICATION

I, TODD DeSIMONE, a Notary Public for and
within the State of New York, do hereby
certify:

That the witness whose testimony as
herein set forth, was duly sworn by me; and
that the within transcript is a true record
of the testimony given by said witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 17th day of November, 2017.

TODD DESIMONE

* * *

1
2 ERRATA SHEET
3 VERITEXT/NEW YORK REPORTING, LLC

4 CASE NAME: IN RE LEHMAN BROTHERS
5 DATE OF DEPOSITION: 11/17/17
6 WITNESS' NAME: JAMES H. ARONOFF

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21 JAMES H. ARONOFF
22 SUBSCRIBED AND SWORN TO
23 BEFORE ME THIS ____ DAY
24 OF ____, 2017.

25 NOTARY PUBLIC
MY COMMISSION EXPIRES ____